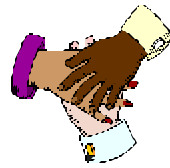




**Metropolitan Police Department**

*Office of Professional Responsibility*  
*Civil Rights & Force Investigation Division*  
**MOA Compliance Monitoring Team**



Metropolitan Police Department  
and  
U. S. Department of Justice

**Memorandum of Agreement**  
**Progress Report**



JANUARY 13, 2005

# **T a b l e o f C o n t e n t s**

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***Only in growth, reform, and change, paradoxically enough, can true security be found.***

**- Anne Morrow Lindbergh**

## **Introduction**

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In January 1999, Chief of Police Charles Ramsey and District of Columbia Mayor Anthony Williams asked the United States Department of Justice to review the Metropolitan Police Department's (MPD) practices as they related to police use of force. In March 2001, the U.S. Department of Justice (DOJ) concluded its review, and later entered into a Memorandum of Agreement (MOA) with the District of Columbia and the Metropolitan Police Department on June 13, 2001. The Agreement built upon the work MPD started during the course of the review, and provided that an Independent Monitor would evaluate the implementation of the Agreement. When the balance of the reforms contained in the Agreement are implemented, the Metropolitan Police Department will be a model for the nation on how to uphold the rule of law while using force only when and to the extent necessary.

This progress report is the twelfth submitted by the Department's Compliance Monitoring Team (CMT). The Compliance Monitoring Team, part of the MPD's Office of Professional Responsibility (OPR), was created by Chief Ramsey to ensure the timely implementation of and compliance with the Memorandum of Agreement. This quarterly report reflects MPD's Memorandum of Agreement activity from October 1, 2004, through December 31, 2004.

**This quarterly report reflects MPD's Memorandum of Agreement activity from October 1, 2004, through December 31, 2004.**

MPD's quarterly reports are required by Memorandum of Agreement paragraph 175.<sup>1</sup> They have been designed by the MPD to share our MOA-related activities not only with the U.S. Department of Justice and the Office of the Independent Monitor (OIM), but also throughout the Metropolitan Police Department and the citizenry at large. Furthermore, there is an addendum to this quarterly report that lists all of the MOA paragraphs and the status of each item.

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<sup>1</sup> MOA paragraph 175 states, "Between 90 and 120 days following the effective date of this Agreement, and every three months thereafter until this Agreement is terminated, MPD and the City shall file with DOJ and the Monitor a status report delineating all steps taken during the reporting period to comply with each provision of this Agreement."

The Metropolitan Police Department is currently in its fourth year of work on implementing the reforms called for in the Memorandum of Agreement. The fourth and fifth years of the MOA are significant in that MPD's "substantial compliance" with the MOA is measured during this time. Paragraph 182 of the MOA reads, in part, that,

*"The Agreement shall terminate five years after the effective date of the Agreement if the parties agree that MPD and the City have substantially complied with each of the provisions of this Agreement and maintained substantial compliance for at least two years. The burden shall be on the City and MPD to demonstrate that it has substantially complied with each of the provisions of the Agreement and maintained substantial compliance for at least two years..."*

The Office of the Independent Monitor is tasked with determining if MPD has substantially complied with the MOA and uses their quarterly reports to provide an analysis of MPD's compliance efforts. As previously reported, the Independent Monitor, MPD, and DOJ have devoted a significant amount of time to defining the concept of substantial compliance to ensure that there are clearly defined measures for each requirement of the MOA. During the last quarter, the OIM issued their first quarterly report that included the objective substantial compliance standards that have been drafted as part of the report.<sup>2</sup> The OIM also included their assessment of MPD's compliance with these standards for portions of the MOA.<sup>3</sup> A more detailed discussion of the OIM's activities can be found in the "Independent Monitor" section of this report.

MPD has continued its efforts to fully comply with all areas of the MOA, and has achieved a number of important accomplishments during this quarter including receiving DOJ approval for a number of MOA deliverables. On November 22, 2004, DOJ provided their final approval for the *Canine Teams General Order*.<sup>4</sup> Both MPD and DOJ have worked together during the past year to revise the order to more accurately describe the tenets of MPD's canine training philosophy, Handler Controlled Alert Methodology (HCAM). Receiving DOJ's approval on the revisions to this order was an important milestone for MPD. However, as MPD was preparing to publish the approved order, MPD identified one additional clarification that we felt was necessary for the order prior to its publication. Accordingly, we contacted DOJ on December 6, 2004 and requested that the definition of a tactical use of a canine include on-lead tracks for suspects. MPD looks forward to DOJ's response on this issue.

MPD also received DOJ's approval on several other important items. On December 9, 2004, DOJ provided their approval for MPD's Field Training Officer (FTO) Program.<sup>5</sup>

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<sup>2</sup> See *Tenth Quarterly Report of the Independent Monitor for the Metropolitan Police Department*, November 12, 2004.

<sup>3</sup> It should be noted that the OIM structured their monitoring such that they will be able to make substantial compliance evaluations for all of the MOA requirements by the end of calendar year 2004.

<sup>4</sup> MOA paragraphs 44-46

<sup>5</sup> MOA paragraph 121f

MPD's Field Training Officers are charged with the responsibility of evaluating MPD's probationary officers who have recently graduated from the Institute of Police Science (IPS) to ensure that only qualified persons are certified and retained as MPD officers.

On December 22, 2004, DOJ approved the Memorandum of Understanding (MOU) between the Office of Citizen Complaint Review and MPD<sup>6</sup>. MPD and OCCR had originally signed an MOU in September of 2002. However, both the Department of Justice and the Independent Monitor identified conflicts within the Memorandum of Understanding that did not comport with enumerated requirements in the MOA. Further, many jurisdictional and process disagreements remained between the agencies, despite the signing of the MOU. MPD and OCCR have had extensive discussions and negotiations over the past two years around the MOU and are very pleased that this important document has received approval from DOJ. A copy of the approved MOU is included as an attachment to this report. The parties plan to formally sign the MOU early during the next quarter.

Finally on December 21, 2004 DOJ provided formal notification that MPD had satisfied the requirements of MOA paragraph 159 that requires the Department to develop a plan to limit the total number of hours an officer may work in any twenty-four hour period and in any seven-day period to prevent officer fatigue.<sup>7</sup> MPD satisfied this requirement by drafting the *Limitation on Work Hours General Order*. MPD plans to issue the approved order early during the next quarter.

In addition, MPD has continued to submit a number of revised deliverables in accordance with the requirements of the MOA. MPD continued working with the Department of Justice on revisions to the Use of Force Incident Report (UFIR), required by MOA paragraph 53. MPD originally proposed revisions to the form in November of 2002. Since that time, MPD and DOJ have been working together to come to an agreement on how best to revise the form. MPD submitted its most recent revised proposal to DOJ for approval on December 1, 2004. MPD appreciates DOJ's continued assistance on this matter, and MPD is confident we will resolve all remaining issues during the next quarter. A more detailed discussion of the UFIR can be found in the "General Orders and Policies" section of this report.

In addition to the revised UFIR package, MPD also submitted the Department's *Semi-Annual Use of Force Curriculum Review*<sup>8</sup>, the revised *Processing Citizen Complaints General Order*<sup>9</sup>, an update regarding the staff assessment required for IPS<sup>10</sup>, as well as

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<sup>6</sup> MOA paragraph 85

<sup>7</sup> It should be noted that, in a letter dated December 21, 2004, the Department of Justice restated their recommendation that MPD should reduce the number of work hours a member can work in a calendar week from 98 to 72 and in a 24-hour period from 18 to 16. However, DOJ also clarified that MPD's decision not to adopt that recommendation would not amount to "non-compliance" with MOA paragraph 159.

<sup>8</sup> MOA paragraph 119

<sup>9</sup> MOA paragraph 94

additional revised lesson plans and supporting materials including the *Cultural Diversity and Sensitivity Awareness Lesson Plan*, the *Use of Force/Use of Force Continuum Lesson Plan (with Manual)*, and the *Pistol Recertification Lesson Plan*.<sup>11</sup>

In addition to working on deliverables, MPD again focused a great deal of resources on the Personnel Performance Management System (PPMS) during this quarter. The PPMS is a computer system, mandated by the MOA, that will be,

*“a computerized relational database for maintaining, integrating, and retrieving data necessary for supervision and management of MPD and its personnel.”<sup>12</sup>*

As previously reported, MPD has experienced significant setbacks in the area of funding for PPMS. In March of 2004, MPD had to temporarily interrupt work with our selected vendor due to a lack of funding. Accordingly, since March 2004, MPD has been directing its efforts toward restarting work with the PPMS vendor and on working with DOJ on negotiating a third modification to the MOA that would provide new deadlines for the development of PPMS. MPD had hoped to sign a MOA modification by the end of the quarter. However, the Mayor's office wanted the assurances of the other affected City agencies that they could meet the proposed deadlines for finalizing the vendor contract prior to agreeing to sign the Modification. Unfortunately, MPD was unable to secure those assurances prior to the end of the quarter. MPD regrets the continued delays we have experienced in implementing PPMS. However, MPD remains committed to securing a finalized contract with the vendor and executing the modification to the MOA. A more detailed discussion of MPD's PPMS efforts can be found in the *“Personnel Performance Management System”* section of this report.

The Metropolitan Police Department is confident we are continuing on our way to becoming a model for the nation on how to uphold the rule of law while using force only when and to the extent necessary. MPD recognizes the importance of ensuring substantial compliance with all of the requirements of the MOA, and we will continue to treat our MOA efforts as a priority.

## **Compliance Monitoring Team**

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The Compliance Monitoring Team (CMT) was created by Chief Ramsey in February 2002, to ensure the timely implementation of and compliance with the Memorandum of Agreement. The CMT falls under the Civil Rights and Force Investigation Division, located within MPD's Office of Professional Responsibility (OPR). For almost two years, Captain Matthew Klein has been serving as the Compliance Coordinator for MPD and

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<sup>10</sup> MOA paragraph 134

<sup>11</sup> MOA paragraph 84, 122, and 129

<sup>12</sup> MOA paragraph 106

has been overseeing the efforts of the CMT in addition to his responsibility for overseeing the Force Investigation Team (FIT). However, on December 2, 2004 Chief Ramsey promoted Klein to the rank of Inspector and also assigned him to oversee the Office of Internal Affairs. In this new role, Inspector Klein will continue to serve as the Compliance Coordinator for the MPD and will oversee both the Office of Internal Affairs and FIT. Inspector Klein has played a pivotal role in implementing the various reforms required by the MOA. His new responsibilities for the Department will enable him to continue these endeavors.

The CMT continued its compliance activities during this reporting period, and coordinated a variety of Memorandum of Agreement efforts. During this quarter, members of the Compliance Monitoring Team again worked closely with the Department's PPMS project leaders on the proposed modification to the MOA. The CMT also continued to provide support to various MPD units to assist them in completing MOA deliverables and to facilitate compliance documentation. The CMT worked with the staff of the Institute of Police Science (IPS) in helping to prepare revised lesson plans as well as enhancements to the December 2004 Semi-Annual Review of the Use of Force Curriculum. In addition, the CMT has also started meeting monthly with IPS staff regarding the FTO program.

**The CMT has started meeting monthly with IPS staff regarding the FTO program. Beginning with the next quarterly report, the CMT will begin summarizing MPD's progress in implementing the DOJ-approved FTO program.**

The CMT continued to work closely with the Independent Monitor to assist their police practice experts in reviewing MPD compliance efforts. The CMT coordinated several meetings with the OIM and their experts regarding the Use of Force Review Board (UFRB). The OIM met with members of the Board as well as the Assistant Chief of OPR to provide technical assistance regarding suggestions the OIM had for improvements to the operation of the Board. In their recent reports, the OIM has cited concerns about the operations of the Board as well as its full compliance with the MOA. The meetings were very beneficial in outlining improvements that can be made to enhance UFRB operations. The CMT also continued its practice of meeting monthly with the Department of Justice to discuss MOA activities and worked closely with DOJ during this quarter on further negotiations surrounding the third modification to the MOA dealing with PPMS deadlines.

In addition, the CMT remains the central repository for MPD's Memorandum of Agreement documents, and has been documenting and transmitting draft policies and other deliverables to DOJ and the Office of the Independent Monitor consistent with

MOA paragraph 173.<sup>13</sup> Finally, the Compliance Monitoring Team continues to closely monitor MPD's costs associated with the Office of the Independent Monitor. With the assistance of the D.C. Office of Contracting and Procurement and MPD's Accounts Payable Office, the CMT continues to actively review OIM invoices to control costs and ensure accountability.

## General Orders and Policies

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Over the course of the Memorandum of Agreement, the U.S. Department of Justice has approved, and MPD has issued, a number of policies related to the Memorandum of Agreement. They include:

- *Use of Force General Order* (MOA paragraphs 37-40)
- *Use of Force Investigations General Order* (MOA paragraph 53)
- *Use of Force Incident Report* (MOA paragraph 53)
- *Handling of Service Weapons General Order* (MOA paragraphs 41 and 43)
- *Canine Teams General Order* (MOA paragraphs 44-46)
- *Oleoresin Capsicum Spray General Order* (MOA paragraphs 47-50)
- *Force Investigation Team Organizational Plan and Operations Manual* (MOA paragraph 57)
- *Force Related Duty Status Determination General Order*
- *Carrying Weapons and Transporting Prisoners Aboard Aircraft General Order*
- *Use of Force Review Board General Order* (MOA paragraph 67)
- *The Office of Internal Affairs Operational Manual* (MOA paragraph 72)
- *Serious Misconduct General Order* (MOA paragraph 72)
- *Community Outreach Program for Filing Citizen Complaints* (MOA paragraph 91)
- *Specialized Mission Unit General Order* (MOA paragraph 150-158)
- *Carrying Service Firearms While Off-Duty in the District of Columbia* (MOA paragraph 42)<sup>14</sup>
- *Limitation on Work Hours General Order* (MOA paragraph 159)

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<sup>13</sup> MOA paragraph 173 states, "*The parties agree that MPD shall hire and retain, or reassign a current MPD employee, for the duration of this Agreement, as an MPD Compliance Coordinator. The Compliance Coordinator shall serve as a liaison between MPD, the Monitor and DOJ, and shall assist with MPD's compliance with this Agreement. At a minimum, the Compliance Coordinator shall: (a) coordinate MPD compliance and implementation activities of this Agreement; (b) facilitate the provision of data, documents and other access to MPD employees and material to the Monitor and DOJ as needed; (c) ensure that all documents and records are maintained as provided in this Agreement; and (d) assist in assigning compliance tasks to MPD personnel, as directed by MPD Chief of Police or his designee.*"

<sup>14</sup> It should be noted that the special order "*Carrying Service Firearms While Off-Duty in the District of Columbia*," which was drafted in order to demonstrate partial compliance with MOA paragraph 42, did not require formal DOJ approval. Accordingly, a copy of the policy was shared with both DOJ and the OIM after it was implemented.



### ***Pending Reengineered Policies***

During this reporting period, the Metropolitan Police Department and the U.S. Department of Justice continued to exchange a variety of detailed correspondence concerning numerous draft MPD policies and procedures. They are listed in order of last activity unless otherwise noted. A status matrix containing all of the MOA paragraphs is submitted as an attachment with this report.

### **Citizen Complaint General Order**

The Metropolitan Police Department submitted a draft *Citizen Complaint General Order* (MOA paragraph 94) to DOJ on October 4, 2002. DOJ replied with detailed comments on November 25, 2002. MPD forwarded the draft to the Office of Citizen Complaint Review on December 27, 2002. The Office of Citizen Complaint Review provided their comments to MPD on January 17, 2003.

After completion of the draft MPD OCCR Memorandum of Understanding on October 7, 2003, MPD incorporated relevant portions of the MOU into the general order and shared a revised draft of the order with OCCR on December 8, 2003. OCCR provided comments on December 10, 2003. On March 31, 2004 MPD notified DOJ that we had become aware that the Fraternal Order of Police (FOP) had raised concerns regarding OCCR and that those concerns impacted their ability to comment on the general order. On April 30, 2004, the FOP received further clarification from OCCR regarding their policies in dealing with MPD officers, and the FOP provided their comments on the order to MPD on June 29, 2004.

In addition to incorporating the DOJ's comments, MPD also worked to ensure that the order remained consistent with the Memorandum of Understanding (MOU) that was being revised between MPD and the Office of Citizen Complaint Review. MPD and OCCR recently obtained approval of the MOU on December 22, 2004.<sup>15</sup> We feel that the additional time we have taken in revising the general order has allowed us to ensure consistency. Accordingly, MPD submitted a revised version of the order to DOJ for approval on December 30, 2004. A copy of the submission is included as an attachment to this report.

### **Limitation on Work Hours General Order**

On November 27, 2002, MPD submitted a draft plan to limit the number of hours worked by MPD officers in any 24-hour period and in any seven-day period (MOA paragraph 159). Since the submission of the plan, MPD has developed a draft general order, *Limitations on Work Hours*. On September 30, 2003 DOJ requested a status update on progress with that order. MPD submitted a draft general order for DOJ's review and approval on February 23, 2004. DOJ provided comments on the order on

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<sup>15</sup> It should be noted that MPD continued to share drafts of the general order with OCCR through the most recent drafts developed in December 2004.

June 10, 2004. MPD reviewed DOJ's comments and prepared a response that was submitted to DOJ on June 30, 2004.

During the third quarter of this year, MPD had requested that DOJ expedite their review of the general order. The District passed emergency legislation entitled the "Public Congestion and Venue Protection Emergency Act of 2004" and the "Public Congestion and Venue Protection Temporary Act of 2004." As part of that legislation, MPD is required to provide officers to work "reimbursable details" at events and venues that meet certain criteria. Accordingly, MPD hoped to implement the *Limitation on Work Hours General Order* as soon as possible. The general order requires that supervisors track the total number of hours their officers are working and places limitations on the total number of hours an officer may work. By implementing the general order, supervisors will be able to ensure they do not assign officers to work reimbursable details if they are approaching their work hour limit. DOJ was receptive to MPD's request, and provided their comments on October 29, 2004. In their letter, DOJ recommended that MPD reduce the total number of hours a member can work in a calendar week from 98 to 72, and in a 24-hour period from 18 to 16. However, on December 21, 2004 DOJ clarified in another letter that MPD's decision not to adopt their recommendation to reduce the hour-limits would not amount to "non-compliance" with MOA paragraph 159. MPD is very pleased to be able to move forward and publish this order. MPD expects to issue the general order early during the next quarter.

### **Performance Evaluation System Enhancements**

The Metropolitan Police Department submitted draft enhancements to its *Performance Evaluation System (PES)* (MOA paragraph 118) to DOJ on November 8, 2002. DOJ provided comments on the PES protocol on May 2, 2003. MPD provided a status report on those comments on September 30, 2003. On October 6, 2003, DOJ provided comments on the status report by email. MPD provided an additional status report on our efforts with the protocol on March 5, 2004. MPD provided a finalized plan to DOJ for review on July 1, 2004.

DOJ requested some additional materials to aid in their review on September 24, 2004. MPD provided those materials to DOJ on September 29, 2004. Both MPD and DOJ had been working toward finalizing the enhancements to the *PES* in time for the Fiscal Year (FY) 2005 annual performance ratings.<sup>16</sup> However, on November 29, 2004 MPD contacted DOJ to inform them that we had decided it was necessary to move forward with the FY 2005 performance ratings before receiving approval for the *PES*. On December 15, 2004, DOJ provided additional comments on the *PES*. MPD is currently reviewing those comments. A more detailed discussion of the *Performance Evaluation System* is included in the "*Personnel Performance Management System*" section of this report.

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<sup>16</sup> Fiscal Year 2005 begins for MPD on October 1, 2004.

### **Field Training Officer Program**

The Metropolitan Police Department submitted a draft enhanced *Field Training Officer Program Protocol* (MOA paragraph 121f) to DOJ on December 6, 2002. DOJ provided comments on MPD's protocol on September 30, 2003. MPD experienced delays over the past year in submitting a revised protocol to DOJ. However, MPD finalized their revisions and enhancements to the protocol during the last quarter, and it was submitted to DOJ on September 27, 2004. On December 9, 2004 DOJ provided its final approval for the FTO program. The FTO program is discussed in greater detail in the "Training" section of this report.

### **Canine Teams General Order**

MPD originally received DOJ approval for the *Canine Teams General Order* during 2002 and issued the policy to the Department on October 7, 2002. However, both DOJ and MPD agreed that the order needed to be enhanced. Accordingly, MPD submitted a revised version of its approved *Canine Teams General Order* (MOA paragraphs 44-46) to DOJ for review on June 4, 2003. DOJ provided comments on that order on July 25, 2003. In their July 25, 2003 letter, DOJ also promised to provide policy revisions they believed to be consistent with the Memorandum of Agreement requirements and the parties' previous agreements. On September 30, 2003, DOJ provided the policy recommendations to further guide MPD's revisions of the *Canine Teams General Order*.

On December 31, 2003 MPD provided a revised general order to DOJ along with a detailed response to all of DOJ's recommended policy revisions. On March 31, 2004, DOJ provided additional comments on the revised general order. MPD provided a revised version of the order to DOJ that attempted to address all of their remaining concerns on June 26, 2004. On September 17, 2004 the Department of Justice emailed MPD with two final requests for the general order. MPD accommodated DOJ's requests and submitted the order to DOJ for final approval on September 24, 2004.

MPD received DOJ's final approval on November 22, 2004. However, as MPD was preparing to publish the approved order, one additional clarification was identified by MPD as being necessary for the order prior to its publication. Accordingly, MPD contacted DOJ on December 6, 2004 and requested that the definition of a "tactical use of a canine" be amended to include on-lead tracks for suspects.

### **Specialized Mission Unit General Order**

The Metropolitan Police Department submitted a draft *Specialized Mission Units General Order* (MOA paragraphs 150-158) to DOJ on October 4, 2002. DOJ provided comments on the order on January 31, 2003. MPD provided a revised draft of the order on June 30, 2003. DOJ provided comments on the order on August 25, 2003. MPD submitted a revised order, along with a copy of the revised *Specialized Mission Units After Action Report* (SMUAAR) on December 31, 2003. The SMUAAR is a form designed by MPD for Specialized Mission Units for incidents when multiple members of those units point their

service weapons at or in the direction of other persons under specific enumerated circumstances. A more detailed discussion of the SMUAAR can be found in the *Specialized Mission Unit After-Action Report* section of this report.

On March 30, 2004 DOJ provided their final approval for the *Specialized Mission Units General Order*. However, on March 31, 2004, MPD requested a delay in the requirement to implement the *SMU General Order*. According to the first modification to the MOA, MPD agreed to implement all DOJ approved policies within 14 business days of receiving DOJ approval.<sup>17</sup> However, MPD wanted to resolve the outstanding issues regarding the *After Action Report* prior to implementing the *SMU General Order* since the *SMU General Order* contains reference to the *After Action Report* and outlines the process for completing it.

Accordingly, to minimize confusion, MPD requested a delay in implementing the *SMU General Order* until 14 business days after DOJ's approval of the *After Action Report*. DOJ granted MPD's request, and MPD prepared a written response to DOJ's March 30, 2004 letter on April 9, 2004. On September 30, 2004, DOJ provided a response to MPD's latest draft of the *After Action Report*. MPD provided a response to DOJ's most recent comments on December 1, 2004. MPD is hopeful that the SMUAAR will be approved during the next quarter and that both the *SMU General Order* and the SMUAAR can be issued to the Department.

### **Disciplinary Process General Order**

A draft *Disciplinary Process General Order* (MOA paragraph 105) was submitted to DOJ for review on May 19, 2003. It is noted that the draft policy was due to DOJ during the renegotiated period of the week of November 17, 2002. However, as previously reported, MPD shared a draft of the order with the Fraternal Order of Police for comment. Prior to November 17, 2002, the FOP indicated that they had concerns with aspects of the draft order. MPD notified DOJ of those concerns and chose to delay the submission of the draft order to address the FOP's concerns.

DOJ provided comments on the May 19 draft order on August 25, 2003. MPD worked on revising the order earlier this year in consultation with the FOP. However, the revision process coincided with ongoing negotiations between the FOP and MPD regarding compensation and working conditions. Article 12 of the Collective Bargaining Agreement, which specifically relates to disciplinary procedures, is currently one of the items being negotiated. Accordingly, any proposed changes to disciplinary procedures must be addressed formally at the bargaining table. MPD notified DOJ on July 29, 2004 that the *Disciplinary Process General Order* could not be finalized by MPD until those negotiations are completed.

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<sup>17</sup> See *Joint Modification No. 1 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department*, September 30, 2002, paragraph 6.

On October 19, 2004 DOJ contacted MPD by letter and asked MPD to provide a projected deliverable date for submission of the order to DOJ. MPD replied to DOJ on November 5, 2004. In the reply, MPD informed DOJ that negotiations regarding the Collective Bargaining Agreement remained ongoing. The parties have reached an impasse, and are now going through the mediation process. We informed DOJ that the mediation process did not have a timeline associated with it that would allow us to project a date for submitting the revised order at this time. MPD committed to keeping DOJ informed, and as soon as the negotiating process is complete, we assured DOJ that we would be able to determine the date by which we will be able to submit the order for review. While MPD remains committed to the requirements of the MOA as they relate to Discipline, we also do not want to do anything that would jeopardize our ongoing negotiations with the FOP or that would be viewed as contrary to the negotiating process.

### **Chain of Command Misconduct Investigations Manual**

The Metropolitan Police Department submitted a draft *Chain of Command Misconduct Investigations Manual* (MOA paragraph 83) to DOJ on October 25, 2002. DOJ provided comments on the *Manual* on March 26, 2003. Part of the requirement of MOA Paragraph 83 is that MPD develop a template to assist investigators with completing their misconduct investigations. Through the PPMS development process, MPD realized that the template should be included in the PPMS system to ensure that consistent, comprehensive information is collected regarding misconduct investigations. However, in order to accomplish this, IBM/CRISNet requested the completed template by January 12, 2004 to ensure that it was included in the design of the system. The template was submitted to DOJ for review on December 30, 2003. DOJ provided their approval "preliminarily," subject to MPD's completion of the several suggested changes, on January 7, 2004. MPD forwarded the revised, final template to DOJ and to IBM/CRISNet on January 12, 2004. MPD also finalized revisions to the *Chain of Command Investigations Manual* (MOA paragraph 83), and forwarded the manual to DOJ for review on February 26, 2004.

Subsequent to the submission of the manual and template, MPD received the April 9, 2004 *Technical Assistance Related to MPD's Chain of Command Investigations* report prepared by the Office of the Independent Monitor. In part, the report contained recommendations specific to the way MPD conducted its misconduct investigations. Accordingly, MPD revised the template to accommodate many of the OIM's recommendations. MPD notified DOJ of these changes to the misconduct investigation template and submitted it along with a newly created "preliminary" misconduct investigation template to DOJ for review on June 7, 2004. Most recently, DOJ provided comments on the Chain of Command Investigations Manual on June 29, 2004 and provided comments on the misconduct investigation templates on September 24, 2004. MPD is currently reviewing both sets of comments.

### **Chain of Command Misconduct Investigations General Order**

The Metropolitan Police Department submitted a draft *Chain of Command Misconduct Investigations General Order* (MOA paragraph 83) to DOJ on November 1, 2002. DOJ provided comments on the order on January 31, 2003. MPD provided an update on the general order to DOJ on December 31, 2003 and provided a revised version of the general order to DOJ for review on February 26, 2004. DOJ provided comments on the order on June 29, 2004. MPD is currently reviewing those comments in conjunction with the *Chain of Command Misconduct Investigations Manual* (MOA paragraph 83) and the associated investigative templates described above.

### **Canine Operations Manual**

The Metropolitan Police Department submitted a draft *Canine Operations Manual* (MOA paragraph 147) to DOJ on November 27, 2002. DOJ provided comments on the manual on September 30, 2003. In their comments, DOJ stated that, "The materials which MPD submitted will likely need to be substantially revised and expanded upon once DOJ and MPD reach agreement about how this methodology is going to be implemented at MPD in compliance with the MOA." MPD has delayed making revisions to the Manual while MPD and DOJ have been revising the *Canine Teams General Order*. Given the finalization of the general order, MPD hopes to receive final approval from DOJ on the order shortly, and will revise the manual accordingly.

### **Timelines**

As previously reported, MPD and DOJ renegotiated a number of outstanding MOA deadlines in September 2002 and agreed to a modification of the MOA.<sup>18</sup> The timeline issues excluded from the first modification were the dates that applied to the Personnel Performance Management System. On September 30, 2003, a second modification to the MOA was signed to renegotiate the outstanding deadlines surrounding PPMS-related deliverables of the MOA.<sup>19</sup> However, as discussed above, MPD's PPMS efforts have been interrupted due to funding issues. MPD notified the Department of Justice on March 8, 2004 that while MPD had made material progress with the PPMS program, existing funding for the program would be exhausted by the end of March 2004. Accordingly, MPD discontinued its work with the selected PPMS vendor and began to aggressively pursue the identification of necessary funding.

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<sup>18</sup> See "Joint Modification No. 1 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Police Department, September 30, 2002."

<sup>19</sup> See "Joint Modification No. 2 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Police Department, September 30, 2003."

Memorandum of Agreement paragraph 114d requires that MPD have a beta-version of PPMS available for DOJ and OIM testing. MOA paragraph 111 requires that MPD submit the "final" PPMS protocol to the Department of Justice for review. Based on the September 30, 2003 modification to the MOA, both of these items had a deadline of June 25, 2004. Unfortunately, MPD realized it would be unable to meet these deadlines based on the PPMS funding setbacks. Accordingly, on June 14, 2004, MPD formally notified DOJ that we would be unable to meet these deadlines and requested a third modification to the MOA. On June 18, 2004 we provided a proposed development schedule to further outline our proposal for the modification. In addition to the proposed development schedule, MPD also provided a listing of assumptions that guided the development of the revised project schedule.

The Metropolitan Police Department and the Department of Justice worked together during the past two quarters in hopes of finalizing a third modification to the MOA. Regrettably, MPD and DOJ were not able to finalize the modification by the end of this quarter. At the close of this quarter, the Mayor's Office raised concerns with the deadlines that MPD had proposed and wanted the assurances of the other affected City agencies that they could meet the proposed deadlines prior to agreeing to sign the Modification. Unfortunately, MPD was unable to secure those assurances prior to the end of the quarter.

Accordingly, MPD notified DOJ on December 23, 2004 of the concerns from the Mayor's office. Specifically, MPD notified DOJ that the Mayor's Office wanted the commitment of the agency heads from the Office of Contracting and Procurement, the Office of the Attorney General, and the Office of the Chief Technology Officer to the proposed dates before signing the document.

MPD provided a subsequent update to DOJ on December 30, 2004. We informed DOJ that Chief Ramsey and MPD staff had been working with the various agencies to address concerns raised by the Mayor's office. Specifically, on December 29, 2004, Chief Ramsey held a meeting with the various agency heads to discuss the concerns that had been raised. Unfortunately, at the conclusion of the meeting, MPD was unable to get a commitment to the January 28, 2005 deadline that had been proposed to DOJ as the date for securing a finalized contract with the PPMS vendor. While all of the agencies agreed to treat the preparation of the PPMS contract for City Council as a top priority, they were not able to commit to a January 28 timeframe. Accordingly, MPD has been working with the agency representatives to identify ways to compress their required reviews to the greatest extent possible.

MPD anticipates meeting with DOJ early during the next quarter to discuss these issues and considers resolving the concerns of the Mayor's Office a top priority. We are hopeful that we will be able to agree to a modification of the MOA during the next quarter that will accommodate the delays experienced in the development of PPMS.

MPD appreciates the Department of Justice's efforts with us in this area. A more detailed report of the status of the PPMS project is included later in this report.

### ***Use of Force Incident Report***

MOA paragraph 53 requires the development of a Use of Force Incident Report (UFIR). The paragraph states, in part, the following:

*“MPD shall complete development of a Use of Force Reporting policy and Use of Force Incident Report. The policy shall require officers to notify their supervisor immediately following any use of force or receipt of an allegation of excessive use of force and to complete a Use of Force Incident Report. Additionally, the policy shall require officers to complete a Use of Force Incident Report immediately following the drawing of and pointing of a firearm at, or in the direction of, another person...”*

As previously reported, the development and implementation of the Use of Force Incident Report (UFIR) raised numerous issues for the Metropolitan Police Department. The UFIR form also raised a number of concerns among the Fraternal Order of Police and the rank and file. Based on these concerns, MPD has continued to work toward revising the UFIR to make it more user-friendly. MPD had obtained feedback from officers that the form, particularly the layout, was complicated and confusing. MPD believed that such confusion contributed to officer frustration with the UFIR.

As a result, MPD updated and reformatted the UFIR form, and submitted the proposed revisions, along with a detailed explanation for each proposed change, to DOJ on November 20, 2002. On March 19, 2003 DOJ provided detailed written feedback on the proposed form. MPD agreed to DOJ's recommendations regarding the UFIR, and submitted a revised UFIR that incorporated all of DOJ's suggestions on December 10, 2003. DOJ provided a response outlining their remaining concerns on February 27, 2004. On April 9, 2004, MPD submitted a written response to DOJ's February 27, 2004 letter.

During the second half of 2004, MPD and DOJ held a series of meetings and discussions to attempt to resolve the remaining outstanding issues surrounding the revised UFIR. Among the remaining issues being discussed was the most appropriate reporting and tracking mechanism when an officer is in “receipt of an allegation of excessive use of force.”<sup>20</sup> Specifically, MPD is concerned with the potential situation where officers would be required to complete a UFIR when they have not used any force. On September 24, 2004, DOJ provided a written response to MPD's April 9, 2004 submission. In the letter, DOJ agreed to MPD's proposed modification that for complaints of excessive force, when an officer maintains that he or she has not used any force, the incident should be processed as a citizen complaint instead of as a reportable use of force. MPD

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<sup>20</sup> MOA Paragraph 53.



appreciates DOJ's receptiveness to working on this issue. On December 1, 2004, MPD replied to DOJ's letter and submitted a final version of the revised UFIR for approval. As part of the submission, MPD also drafted a Special Order outlining the procedures for completing a UFIR.

We appreciate DOJ's continued willingness to work with us on this issue. Upon DOJ's final approval of the revised UFIR, MPD will implement the revised form and post an electronic version on the Department's Intranet. MPD is confident that, when approved, the revised form will be a significant improvement over the existing UFIR.

### ***Pointing of a Weapon at or in the Direction of a Person***

In the December 10, 2003 letter to DOJ concerning revisions to the UFIR, MPD also discussed another requirement of MOA paragraph 53. Paragraph 53 states, in part, that MPD's use of force policy shall,

*"...require officers to complete a Use of Force Incident Report immediately following the drawing of and pointing of a firearm at, or in the direction of, another person..."*

Based on MPD's experience with this requirement over the course of the MOA, and based on concerns raised by the Fraternal Order of Police, MPD proposed revisiting this requirement and modifying the MOA.

MPD agrees that tracking the pointing of a weapon at or in the direction of a person is important. However, MPD proposed that this information need not be tracked on a Use of Force Incident Report per se. The MOA does not include the pointing of a weapon in its definition of use of force.<sup>21</sup> MPD considers the pointing of a weapon to be a reportable action. MPD is also very mindful of the concerns of the Fraternal Order of Police. The FOP has repeatedly raised concerns that capturing a "pointing" incident on a UFIR, but not classifying it as a use of force, can be viewed as somewhat misleading.

Accordingly, MPD developed a draft Reportable Incident Form (RIF). The new form provides a mechanism for tracking "pointing" incidents without associating them with a use of force. Members would complete this form anytime they draw and point their weapons at or in the direction of another person. MPD included the proposed Reportable Incident Form with its December 10, 2003 UFIR submission to DOJ. DOJ provided a response on February 27, 2004. In their response DOJ indicated they were close to providing approval for the Reportable Incident Form based on MPD's response to several procedural concerns including providing assurances that the forms would receive appropriate supervisory review.

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<sup>21</sup> MOA Paragraph 35.

MPD provided a response to DOJ on April 9, 2004. Specifically, MPD submitted a draft Teletype to DOJ for review that ensures that the Reportable Incident Forms receive appropriate supervisory review, comparable to the review done for completed UFIRs. DOJ provided a response to MPD's submission on September 24, 2004. In their letter, DOJ has proposed two final, minor modifications to the RIF. MPD provided a response to DOJ on the RIF on December 1, 2004 that accommodated DOJ's two remaining concerns. In addition, as part of the submission, MPD took the draft Teletype regarding the RIF, previously submitted to DOJ on April 9, 2004, and replaced it with a draft Special Order. While Teletypes are an effective means for transmitting new rules and regulations to the Department quickly, MPD feels that using a Special Order will be a more effective way of communicating the procedures associated with the RIF, as well as the UFIR, over time.

### ***Specialized Mission Unit After-Action Report***

Finally, as previously reported, MPD sought to amend the reporting requirements for the UFIR form as it relates to select MPD Specialized Mission Units for incidents when multiple members of those units point their service weapon under specific enumerated circumstances. A Specialized Mission Unit is defined in the MOA as a group of officers who

*"...engage in significant patrol-related activities on a routine basis including contacts, stops, frisks, and searches..."<sup>22</sup>*

Examples of Specialized Mission Units within MPD are the Emergency Response Team (ERT) and the Warrant Squad. MPD is concerned about delays in operational efficiency when numerous SMU members are engaged in a specific activity where it is expected that most, if not all, members would be pointing their weapons (such as in a high risk warrant situation).

In a letter sent to DOJ on March 5, 2003, MPD proposed that members involved in such an incident would be exempt from having each member complete a UFIR. Instead, a unit manager would complete a Specialized Mission Unit After-Action Report.<sup>23</sup> DOJ provided a response to this request on August 25, 2003. In their response, DOJ recommended some revisions to the proposed form as well as revisions to the draft *Specialized Mission Unit General Order*.

On December 31, 2003 MPD provided a revised Specialized Mission Unit After-Action Report along with a revised *Specialized Mission Unit General Order* that incorporated the policies and procedures for the After-Action Report. MPD has developed the

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<sup>22</sup> MOA Paragraph 149

<sup>23</sup> This form was previously called the *Specialized Mission Unit Force Incident Report* or SMUFIR

following specific criteria for when a "pointing" incident can be recorded on a Specialized Mission Unit After-Action Report:

- The Specialized Mission Unit (SMU) is a permanent, established unit meeting the requirements established in SMU General Order.
- The SMU is operating as a team at the time of the incident.
- The SMU is led by a clearly identified police manager during the incident (a lieutenant or above.)
- The SMU is on a pre-planned operation with a clear mission (e.g. execution of a high risk warrant).
- Members are working in unison.

MPD's goal with the After-Action Report is still to capture all pertinent information from the UFIR and the proposed MPD Reportable Incident Form, but to do it in a single format (one after-action report completed by a manager rather than 15 individual, nearly identical reports). MPD feels that the revised *SMU General Order*, combined with the revised After-Action Report will accomplish this goal while meeting the spirit of the MOA.

DOJ provided comments on both the *Specialized Mission Unit General Order* and the After-Action Report on March 30, 2004. In their response DOJ provided final approval on the *Specialized Mission Unit General Order* and outlined their remaining concerns regarding the After-Action Report. However, on March 31, 2004 MPD requested that DOJ grant an extension for the 14-business day implementation requirement for approved policies while MPD and DOJ resolve the remaining issues with the After-Action Report.<sup>24</sup> DOJ granted MPD's request, and MPD submitted a written response to DOJ's March 30, 2004 letter on April 9, 2004. DOJ provided their final concerns regarding the After-Action Report on September 24, 2004, specifically around the use of a SMUAAR to document a high-risk warrant situation.

On December 1, 2004, MPD replied to DOJ and clarified that MPD continues to feel that the execution of a high-risk warrant, when meeting the other specific criteria outlined in the *Specialized Mission Unit General Order*, is one of the situations where a SMUAAR is appropriate. We believe the fluidity of these situations makes the SMUAAR the more appropriate means for documenting the incident. While there is still some further

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<sup>24</sup> See "Joint Modification No. 1 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department, September 30, 2002," paragraph 6.

discussion that needs to take place, we are hopeful we can resolve the outstanding issues with all three of the UFIR-related forms during the next quarter.

## Communications & Community Outreach

On July 26, 2002, the Metropolitan Police Department's Office of Corporate Communications submitted a Communications Plan to DOJ regarding the Memorandum of Agreement. However, subsequent to that date, new outreach deliverable timelines were agreed upon. A revised Communications Plan reflecting the new outreach dates was completed and submitted to DOJ on November 1, 2002. DOJ provided their approval of the plan on January 31, 2003.

The Metropolitan Police Department Office of Corporate Communications has been the primary generator of MOA-related communications materials and activities. The Command Staff of MPD and the Compliance Monitoring Team have also played an active role in MOA communications activities.

The *Civil Rights and Force Investigations Division* section on the MPD website, launched in 2002, continues to be a source for providing information to the public regarding MPD's efforts.<sup>25</sup> Copies of all of MPD Memorandum of Agreement progress reports are posted on the website.<sup>26</sup>

MPD also continues to

embrace the concept of multiple conduits for citizens to file citizen complaints. In addition to traditional complaint reporting methods, citizens can call a toll free telephone number (800-298-4006), email complaints to [citizen.complaints@dc.gov](mailto:citizen.complaints@dc.gov), fax complaints to (202 727-5116); and hearing impaired stakeholders can file complaints via TDD at 202-898-1454.<sup>27</sup> Detailed, specific



MPD Civil Rights and Force Investigation Division Homepage

<sup>25</sup> [http://www.mpd.dc.gov/serv/citizencomplaints/file\\_complaint.shtm](http://www.mpd.dc.gov/serv/citizencomplaints/file_complaint.shtm)

<sup>26</sup> Quarterly Force Statistics and MPD MOA Progress Reports can be found online at: [http://mpdc.dc.gov/serv/citizencomplaints/crfid\\_reports.shtm](http://mpdc.dc.gov/serv/citizencomplaints/crfid_reports.shtm)

<sup>27</sup> MOA paragraph 92.

information on how to file a citizen complaint with MPD as well as a link to the Office of Citizen Complaint Review are also available on the MPD website.

The MOA also requires both the City and MPD to develop promotional materials regarding the citizen complaint process. Specifically, MOA paragraph 89 requires that,

*“Within 120 days of the effective date of this agreement, the City shall make complaint forms, and informational materials available at OCCR, MPD headquarters, all MPD District stations and sub-stations, libraries, the internet, and, upon request, to community groups and community centers. At each MPD District station and sub-station, MPD shall permanently post a placard describing the complaint process and include the phone number of MPD's Office of Professional Responsibility.”*

On September 8, 2004, MPD notified both the Department of Justice and the Office of the Independent Monitor that our email address for citizen complaints had changed and that we were planning to update our citizen complaint promotional materials. MPD's new email address for receiving citizen complaints, as noted above, is [citizen.complaints@dc.gov](mailto:citizen.complaints@dc.gov).

During this quarter, revisions were made to the Citizen Complaint Brochure, Frequently Asked Questions (FAQ) Sheet, and Poster. MPD's website has already been updated with the new email address. MPD is also using this opportunity to replace references in our materials to the "Office of Citizen Complaint Review" with "Office of Police Complaints." The Office of Citizen Complaint Review's name will be officially changed to the Office of Police Complaints on January 1, 2005. The revised materials were also shared with OCCR for their comment and input. We expect to issue the revised materials to the Department in early January.

### ***Office of Citizen Complaint Review***

In the District of Columbia, the investigation of citizen complaints against MPD police officers involves both the Metropolitan Police Department and the Office of Citizen Complaint Review. The District government enacted a law in 1999 establishing the Office of Citizen Complaint Review and the governing Citizen Complaint Review Board (CCRB). The mission of OCCR is to investigate, settle and adjudicate complaints of misconduct filed by the public against officers of the Metropolitan Police Department in an independent, fair and timely manner.

During this quarter, the District of Columbia City Council passed the "Omnibus Public Safety Agency Reform Amendment Act of 2004." One of the changes brought about by the legislation will be the name change of both the OCCR and the CCRB. On January 1, 2005, OCCR will become the Office of Police Complaints (OPC) and the CCRB will become the Police Complaints Board (PCB). The Mayor and City Council supported the

agency's renaming in order to more clearly convey the agency's mission of handling complaints against the police. They also wanted to make clear that anyone is welcome to file a complaint, whether or not they live in the District, and without regard to their United States citizenship status.

The agency will have a new web address, <http://dcpc.dc.gov>, which will replace <http://occr.dc.gov>. The new website and other outreach materials will feature the new name, as well as a new logo pictured above. However, the renaming of the agency will not affect the daily work that OCCR/OPC performs.



Office of Police Complaints Logo

### **Memorandum of Understanding**

A Memorandum of Understanding was signed by representatives of both MPD and OCCR on September 28, 2002. The MOU was drafted, pursuant to MOA paragraph 85, to address information sharing between the two agencies, training for OCCR investigators, complaint intake and referral, witness interviews, and other items. MOA Paragraph 85 requires that, in part,

*“...the City and MPD shall develop a written plan, in timely consultation with DOJ, that clearly delineates the roles and responsibilities of OCCR and MPD regarding the receipt, investigation, and review of complaints. At minimum, the plan shall specify each agency's responsibility for receiving, recording, investigating, and tracking complaints; each agency's responsibility for conducting community outreach and education regarding complaints; how, when, and in what fashion the agencies shall exchange information, including complaint referrals and information about sustained complaints; and the role and responsibilities of MPD official serving on the Citizen Complaint Review Board (CCRB).”*

As previously noted, the Department of Justice and the Independent Monitor identified conflicts within the Memorandum of Understanding that did not comport with enumerated requirements in the MOA. Further, many jurisdictional and process disagreements remained between the agencies, despite the signing of the MOU.

Over the course of the last two years, representatives from each agency have met to discuss revisions to the MOU and to discuss outstanding issues. The meetings were very productive, and both agencies were able to agree to a number of revisions, including in the areas of information exchange and in training for OCCR investigators. Accordingly, MPD and OCCR submitted a revised MOU to DOJ on October 7, 2003. However, it was noted that one outstanding issue remained between the two agencies; MPD and OCCR were continuing discussions regarding the duties of the MPD member that serves on the Citizen Complaint Review Board, specifically the guidelines and procedures for when it

would be appropriate for the MPD member of the CCRB to recuse him or herself from Board proceedings.

On May 3, 2004, MPD and OCCR notified DOJ that the Citizen Complaint Review Board had approved the re-drafting of the "MPD member recusal" section of the MOU, and therefore, all remaining issues with the MOU had been resolved. DOJ provided their comments on the MOU on May 25, 2004.

During the third quarter of 2004, DOJ requested that MPD and OCCR consider a final addition to the MOU before submitting it. The MOU provides for OCCR to use MPD's Court Automated Notification System (CANS) to schedule officer appearances at OCCR. Scheduling officers via CANS is a two-week process. Accordingly, if an officer misses an appearance, there can be a significant delay in interviewing the officer while OCCR goes through the process of making another CANS request. DOJ requested that MPD take a more active role in assisting OCCR with rescheduling officers who fail to attend scheduled OCCR proceedings. MPD reviewed this request and agreed to include appropriate language in the MOU. The final draft of the MOU was submitted to the Department of Justice for review on September 24, 2004. DOJ provided their final approval for the MOU on December 22, 2004. In their letter DOJ commented,

*"We applaud the cooperative effort engaged in by OCCR and MPD in working to resolve the outstanding issues, and in fleshing out some other aspects of the MOU to produce a cogent document which clearly delineates the roles of MPD and OCCR in addressing citizen complaints."*<sup>28</sup>

MPD thanks the OCCR for their commitment and hard work over the past two years in revising this important document. A copy of the MOU approved by the Department of Justice is included in the Appendix of this report. MPD and OCCR plan to sign the MOU early during the next quarter.

MPD continues to be very pleased with our relationship with OCCR. MPD has included information and links to the OCCR on its website, and has included information about the OCCR in its printed materials. We feel the continued communication between the two agencies has led to a very positive working relationship.

## Investigations

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One of the cornerstones of the MOA is ensuring that both police officer misconduct and use of force investigations are fair, complete, and sufficient. These types of

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<sup>28</sup> Letter from Tammie M. Gregg to Inspector Matthew Klein and Phillip K. Eure re: "MPD/OCCR Memorandum of Understanding," December 22, 2004.

investigations fall under the purview of the MPD's Office of Professional Responsibility. OPR determines which MPD unit will be responsible for the investigation of specific use of force and misconduct incidents. Within OPR, there are two primary organizational elements that conduct investigations: the Force Investigation Team and the Office of Internal Affairs (OIA). MOA paragraph 61 requires that the Force Investigation Team investigate serious use of force incidents<sup>29</sup> as well as use of force incidents indicating potential criminal conduct.<sup>30</sup> Other use of force incidents are investigated by the member's chain of command officials and are referred to as "chain of command use of force investigations."

The Office of Internal Affairs is responsible for investigating allegations of "serious misconduct" as defined in MOA paragraphs 72 and 73. Other allegations of misconduct are investigated by the member's chain of command officials and are referred to as "chain of command misconduct investigations."

As previously reported, Chief Ramsey requested that the Independent Monitor provide recommendations regarding improvements that could be made to MPD misconduct and non-FIT use of force investigations. The OIM promptly responded to this request, and submitted a report entitled *"Technical Assistance Related to MPD's Chain of Command Investigations"* on April 9, 2004.

In response to the report, the Office of Professional Responsibility, lead by the Compliance Monitoring Team, developed and/or enhanced several documents in order to address some of the issues that were identified. Although most of the documents are not formally required by the Memorandum of Agreement, MPD felt it was important to develop these policies and documents to help assist chain of command investigators and to improve the quality of both our use of force and misconduct investigations.

MPD found that many of the OIM's recommendations could be addressed through the creation and/or modification of Chain of Command Investigation Templates. Specifically, the following templates were used to address the OIM's recommendation:

- Use of Force Preliminary Investigation Template
- Use of Force Final Investigation Template

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<sup>29</sup> MOA Paragraph 33 defines serious use of force as, "lethal and less-than-lethal actions by MPD officers including: (i) all firearm discharges by an MPD officer with the exception of range and training incidents and discharges at animals; (ii) all uses of force by an MPD officer resulting in a broken bone or an injury requiring hospitalization; (iii) all head strikes with an impact weapon; (iv) all uses of force by an MPD officer resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (v) all other uses of force by an MPD officer resulting in a death; and (vi) all incidents where a person receives a bite from an MPD canine."

<sup>30</sup> MOA Paragraph 35 states, "The term 'use of force indicating potential criminal conduct by an officer' shall include all strikes, blows, kicks or other similar uses of force against a handcuffed subject."



- Misconduct Preliminary Investigation Template
- Misconduct Final Investigation Template

The templates were distributed to the Department and have been in use since May 2004. All Department supervisors are required to use these templates for their investigations. In addition, the four templates were provided to the OIM and DOJ on June 7, 2004 for comment. The Department of Justice provided comments on the templates on September 24, 2004. MPD has found that the use of these templates has helped to ensure that supervisors include MOA-required information when they complete their investigations. MPD is currently reviewing DOJ's comments on the templates and expects to submit revised templates during the first quarter of 2005.

### ***Use of Force***

Chief of Police Charles Ramsey established the Force Investigation Team in January 1999. FIT has evolved into the new national model for police use of force investigations. The team, which took a business-related perspective to force investigations, has been recognized internationally for its high-quality investigations and unique approach to use of force issues.

Previously, investigative protocols were established to comply with the requirements of the Memorandum of Agreement in the form of the *Force Investigation Team Organizational Plan and Operations Manual*. A copy of the revised manual reflecting these protocols was originally submitted to the Department of Justice on February 5, 2002, and to the Independent Monitor on April 8, 2002. After a series of comments and revisions, MPD was pleased to receive DOJ's approval for this important document on December 31, 2003. FIT implemented the manual on January 29, 2004. FIT has worked very hard to provide a comprehensive operations manual that reflects the provisions of the MOA, and they feel that the DOJ-approved manual has been an invaluable resource for their investigators.

The MOA requires that FIT investigators receive specialized training. MOA paragraph 84 reads, in part, that,

*“MPD shall provide specialized training to investigators who conduct shooting investigations.”<sup>31</sup>*

On September 20, 2002, records demonstrating FIT's compliance with training were submitted to both DOJ and the OIM. DOJ requested an update on FIT's training on September 30, 2003, and MPD provided that update on June 30, 2004. DOJ provided a

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<sup>31</sup> MOA paragraph 84

response on August 31, 2004. The report asked for some additional information regarding how FIT investigators are trained. MPD is currently working on a response to DOJ's most recent comments. During this quarter, the FIT Commanding Officer and the CMT met with one of the police practice experts from the OIM regarding technical assistance for FIT training. The meeting was very beneficial, and the OIM provided helpful recommendations that FIT will be incorporating into its training plan.

In addition to providing technical assistance for FIT training, the OIM has also continued to submit consistently favorable reports regarding the quality of the FIT's investigations. In their most recent quarterly report, the OIM said,

*"The OIM has reviewed all preliminary and final use of force investigation reports prepared by FIT. From the start of this review, we have been consistently impressed with the high quality of investigations performed by FIT."*<sup>32</sup>

**The OIM has continued to submit very favorable reports regarding the Force Investigation Team and their investigations.**

FIT is committed to ensuring it maintains the highest level of quality in its use of force investigations and will continue to comply with all of the requirements of the MOA.

### **Office of Internal Affairs**

MPD's Office of Internal Affairs continues to be a primary hub of MOA compliance efforts. As previously reported, MPD implemented the *Serious Misconduct Investigations General Order* on January 16, 2004 of this year. The *Serious Misconduct Investigations General Order* serves as the basis for outlining OIA's investigative responsibilities with regards to MOA requirements. The MOA specifies the types of alleged misconduct that must be investigated by the Office of Internal Affairs. MPD has defined these types of misconduct as "serious misconduct."

During this quarter, the Office of the Independent Monitor continued its practice of reviewing FIT, OIA, and chain of command investigative reports. During this quarter, the OIM reviewed a random selection of 79 misconduct and non-FIT use of force investigations.<sup>33</sup> The investigations are reviewed for compliance with the MOA by the OIM's police practice experts. The selected sample consisted of investigations randomly selected from each of the seven MPD police districts as well as other MPD assignments. The OIM and MPD worked together this quarter to provide the police practice experts with copies of the selected cases. The OIM again devoted a significant amount of time this quarter to reviewing the selected sample and documenting their analysis.

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<sup>32</sup> *Tenth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department*, July 28,, 2004, p. 31.

<sup>33</sup> MPD and the OIM had previously clarified that FIT and OCCR investigations would not be considered part of the sample.

Over the course of their reviews, the OIM has provided useful statistical summaries of MPD's compliance with the various requirements for use of force and misconduct investigations, highlighting both areas of success as well as the areas that need improvement. For example, the OIM has consistently found that the proper authority within MPD has investigated use of force and misconduct allegations in at least 95% of the cases they have reviewed.<sup>34</sup> They have also found that MPD has properly excluded involved supervisors and officials from conducting investigations into use of force and misconduct in at least 95% of the cases they have reviewed.<sup>35</sup> The OIM has also found that greater than 90% of the investigations reviewed included a description of the use of force incident or alleged misconduct, a summary of the relevant evidence gathered, and proposed findings that were supported by analysis.<sup>36</sup>

However, the OIM's statistical summaries also highlight areas needing improvement. For example, on average, less than 50% of the complaints made at a location other than OPR are forwarded to OPR by the next business day, as required by the MOA.<sup>37</sup> The OIM has also found that the timeliness of MPD investigations needs improvement as well.<sup>38</sup> MPD has found these statistical summaries to be very useful in identifying the areas that need focused attention. Statistical breakdowns by quarter can be found in the appendix of each of the Monitor's quarterly reports.<sup>39</sup>

MPD's Office of Professional Responsibility is committed to ensuring that all of the use of force and officer misconduct investigations conducted by the Department are consistent with the requirements of the MOA. OPR will continue implementing the remaining reforms contained in the MOA and looks forward to continuing its work with the Office of the Independent Monitor and with DOJ.

## **Police Canine Teams**

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On May 4, 2000 the Metropolitan Police Department implemented an interim canine policy and began the initiation of significant improvements in our canine operations. The Department of Justice acknowledged these improvements in paragraph 44 of the Memorandum of Agreement. Paragraph 44 reads,

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<sup>34</sup> MOA paragraphs 57, 61, 64, 68, 72, 79, 80

<sup>35</sup> MOA paragraph 80

<sup>36</sup> MOA paragraph 62, 65, 74, and 102

<sup>37</sup> MOA paragraph 94

<sup>38</sup> MOA paragraph 62, 65, 74, and 103.

<sup>39</sup> For the most recent statistical summaries, see "*Tenth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department, November 12, 2004*," Appendix B. All of the OIM's reports can be found on the Internet at <http://www.policemonitor.org>.

*“DOJ acknowledges that MPD has implemented an interim canine policy via teletype and has initiated significant improvements in its canine operations, including the introduction of a new handler-controlled alert curriculum and the use of new canines.”*

After the signing of the MOA, MPD worked on developing a revised *Canine Teams General Order* that incorporated relevant MOA requirements. DOJ approved MPD's *Canine Teams General Order*, and that policy was implemented on October 7, 2002.

MPD has been pleased with the progress of the implementation of the *Canine Teams General Order*, and is extremely satisfied with the creation of the new *Canine Operations Manual*. However, as previously reported, the Office of Professional Responsibility conducted an assessment of MPD police canine incidents in early 2003 that had occurred since the institution of the second Force Investigation Team in January 2002. While the overwhelming number of canine bites were justified and within policy, the assessment did raise some questions concerning on-lead canine bites and warning announcements related to canine deployment. Further, issues were raised concerning the shifts and squads involved in canine bite incidents. The OIM also raised several concerns in their April 2003 quarterly report.<sup>40</sup>

In response to these concerns, the Commander of the Special Operations Division began to institute changes within the Canine Unit. MPD also submitted a revised version of the approved *Canine Teams General Order* to the Department of Justice for review on June 4, 2003. DOJ's primary concerns were with canine bites that were occurring while canines were “on-lead” and bites that were occurring without a warning being given. MPD agreed with these concerns and revised the *Canine Teams General Order* to address these issues. MPD's primary focus in revising the general order was to provide a more comprehensive definition for Handler-Controlled Alert Methodology (HCAM), the canine training methodology employed by MPD. MPD feels that the revised general order, along with the training enhancements<sup>41</sup> instituted by the Canine Unit will address the concerns that were raised.

MPD has worked with DOJ on revisions to the order since June 2003. MPD was very pleased to receive DOJ's final approval on the revised *Canine Teams General Order* on November 22, 2004. Receiving DOJ's approval on the revisions to this order was an important accomplishment for MPD. However, as MPD was preparing to publish the approved order, we identified one additional clarification that we felt was necessary for the order prior to its publication. Specifically, we felt that the definition of a “tactical use of a canine” should include instances of on-lead tracks for suspects. Accordingly, on December 6, 2004, we contacted DOJ requesting this change and submitted a

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<sup>40</sup> Fourth Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department, April 29, 2003.

<sup>41</sup> See “Transition Point” and “Decision Point” discussion, *Metropolitan Police Department and U.S. Department of Justice Memorandum of Agreement Progress Report*, July 10, 2003, p.14

revised order with adjusted definitions for both "tactical use of canine" and "non-tactical use of canine." MPD appreciates DOJ's continued efforts in this area. DOJ has been very responsive to MPD on this issue and has devoted a great deal of their resources to working with us on revisions to the order over the past year. We are very hopeful that the order can be finalized and published during the next reporting period.

In addition to the general order revisions described above, MPD also submitted its comprehensive *Canine Lesson Plan and Training Curriculum* to DOJ on October 4, 2002 (MOA Paragraph 145). A *Canine Operations Manual* was also developed (MOA Paragraph 147). A draft of the manual, which institutionalizes almost all MPD canine issues into one document, was completed and submitted to DOJ on November 27, 2002. DOJ provided comments on both the training curriculum and the manual on September 30, 2003. In their comments, DOJ stated that, "The materials which MPD submitted will likely need to be substantially revised and expanded upon once DOJ and MPD reach agreement about how this methodology is going to be implemented at MPD in compliance with the MOA." MPD has delayed finalizing revisions to the Manual and the Lesson Plan while we have been working with DOJ on finalizing revisions to the *Canine Teams General Order*. Based on the progress made during this quarter, we are confident we will be able to submit both the lesson plan and the manual during the next quarter.

MPD's Canine Unit continues to be committed to ensuring that their policies and practices adhere to the requirements and to the spirit of MOA. MPD will continue to work with DOJ during the next quarter to finalize the *Canine Teams General Order* as well as the *Canine Operations Manual* and *Canine Lesson Plan and Training Curriculum*.

## **Training**

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Training and education are key aspects of the Metropolitan Police Department's use of force management. Accordingly, the Department's Maurice T. Turner Institute of Police Science is tasked with the responsibility to train members of the Department on the reengineered MPD policies. IPS continued its efforts this quarter regarding compliance with the MOA. A summary of those efforts appears below.

### ***Lesson Plans***

The MOA provides for DOJ approval over MPD's use of force curriculum. Pursuant to MOA Paragraph 119 and 122, MPD originally submitted the eleven lesson plans that comprised its use of force curriculum to DOJ on July 24, 2002. The status of those lesson plans is outlined in Table 1 below. During this quarter, MPD submitted all of its outstanding use of force lesson plans to DOJ for review on December 30, 2004. Specifically, MPD submitted the following lesson plans:

- Officer Street Survival Lesson Plan
- Pistol Qualification
- Use of Force Continuum (with Manual)

The lesson plans incorporated comments from DOJ's most recent correspondence.

It should be noted that DOJ had previously approved the Pistol Qualification Lesson Plan on September 30, 2003. However, in December 2003, MPD informed DOJ that the lesson plan was being reformatted into three separate lesson plans: In-Service Pistol Recertification, Range 2000, and Simmunitions. Since that time, MPD has been working with DOJ on revisions to the lesson plans. The most recent submission of the three lesson plans to DOJ this quarter includes expanded language in the In-Service Pistol Recertification lesson plan regarding the decontamination of a subject after being sprayed with OC Spray. This language was added in response to a recommendation made by the Independent Monitor.

| <b>Table 1: MPD Use of Force Curriculum Summary</b> |                              |
|---|------------------------------|
| ASP Tactical Baton Training Program                 | Approved by DOJ (09-30-03)   |
| Close Quarter Combat                                | Approved by DOJ (09-30-03)   |
| Controlled F.O.R.C.E.                               | Approved by DOJ (09-30-03)   |
| Ground Fighting                                     | Approved by DOJ (09-30-03)   |
| Handcuffing   | Approved by DOJ (09-30-03)   |
| Krav/Maga   | Approved by DOJ (09-30-03)   |
| OC Spray  | Approved by DOJ (09-30-04)   |
| Officer Street Survival                             | Pending DOJ (as of 12-30-04) |
| Pistol Qualification                                | Pending DOJ (as of 12-30-04) |
| Use of Force Continuum (with Manual) <sup>42</sup>  | Pending DOJ (as of 12-30-04) |
| Verbal Judo   | Approved by DOJ (09-24-04)   |

In addition to the use of force curriculum, IPS completed development of sixteen lesson plans in September 2002 to demonstrate compliance with MOA paragraphs 84, 98, and 129 that deal with training supervisors and investigators. The lesson plans also served as the curriculum for fiscal year 2003 Annual In-Service Training. Table 2 summarizes the lesson plans that were created to comply with MOA paragraphs 84, 98, and 129 as well as the current status of each lesson plan. During this quarter, MPD submitted the following revised lesson plans to DOJ for approval

- Interview and Interrogation Lesson Plan<sup>43</sup>

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<sup>42</sup> It should be noted that this lesson plan was also submitted as one of the sixteen lesson plans that comprised the curriculum for fiscal year 2003 Annual In-Service Training.

- Cultural Diversity and Sensitivity Awareness Lesson Plan
- Use of Force Continuum (with Manual) Lesson Plan

| <b>Table 2: MOA 84, 98, and 129 Lesson Plans Status</b>  |   |
|--|---|
| Administrative Misconduct Investigation Policy & Procedures using the Preponderance of Evidence Standard | Pending approval of <i>Chain of Command Misconduct Investigations General Order</i> and <i>Chain of Command Investigations Manual</i> |
| Arrest, Custody, and Restraint Procedures  | Approved by DOJ (09-30-04)  |
| Bias-related Hate Crimes   | Approved by DOJ (05-16-03)  |
| Canine Policies and Procedures   | Pending approval of <i>Canine Teams General Order</i>   |
| Command Accountability   | Approved by DOJ (11-25-02)  |
| Communication and Interpersonal Relationship Skills  | Approved by DOJ (11-25-02)  |
| Crime Scene Preservation   | Approved by DOJ (05-16-03)  |
| Cultural Diversity and Sensitivity Awareness   | Pending DOJ (12-30-04)  |
| Defensive Tactics  | Approved by DOJ (05-16-03)  |
| Ethics, Integrity, and Professionalism   | Approved by DOJ (11-25-02)  |
| Interview and Interrogation  | Pending DOJ (12-30-04)  |
| Theories of Motivation and Leadership  | Approved by DOJ (11-25-02)  |
| Use of Force and Use of Force Continuum (with Manual) <sup>44</sup>                                      | Pending DOJ (12-30-04)  |
| Use of Force Incident Report Form  | Pending approval of revised UFIR.   |
| Use of Force Review Board  | Approved by DOJ (09-30-04)  |
| Verbal Judo Recertification  | Approved by DOJ (11-25-02)  |

MPD looks forward to receiving comments from DOJ on the lesson plans that were submitted during this quarter.

<sup>43</sup> It should be noted that for the Interview and Interrogation lesson plan, DOJ did not request specific revisions to the lesson plan but requested a copy of the excerpts that were referenced in the lesson plan from "*Subconscious Communication for Interviewing and Interrogating, Detecting Danger, and Advanced Interview and Interrogation*" by Chief Steve Rhoads.

<sup>44</sup> It should be noted that this lesson plan was also submitted as one of the eleven lesson plans that comprised the use of force curriculum originally submitted to DOJ July 24, 2002 .

### ***Field Training Officer Program Protocol***

The Metropolitan Police Department submitted a draft *Enhanced Field Training Officer Program Protocol* to DOJ on December 6, 2002, pursuant to MOA paragraph 121f. The MOA requires that,

*“MPD shall continue its Field Training program. Within 120 days of the effective date of this Agreement, MPD shall develop a protocol, subject to approval by DOJ, to enhance the Field Training program. The protocol shall address the criteria and method for selecting Field Trainers, the training provided to Field Trainers to perform their duties, the length of time that probationary officers spend in the program, the assignment of probationary officers to Field Trainers, the substance of the training provided by the Field Trainers, and the evaluation of probationary officer performance by Field Trainers.”<sup>45</sup>*

DOJ provided comments on MPD’s submission on September 30, 2003. MPD has experienced delays over the past year in submitting a revised protocol to DOJ. During this time, the Independent Monitor has focused their attention on this issue and has encouraged MPD to submit revisions as soon as possible. During the last quarter, MPD identified a number of immediate reforms that could be implemented. Specifically, the Director of IPS has developed several program enhancements designed to improve coordination and collaboration between IPS and the members that serve as Master Patrol Officers (MPO)<sup>46</sup> / Field Training Officers. The enhancements include:

- Including MPOs/FTOs in the development of Daily Roll Call Training.
- Including MPOs/FTOs in the development and implementation of the 2005 In-Service Program.
- Offering Enhanced Instructor Training to MPOs/FTOs.
- Allowing MPOs/FTOs to serve as adjunct IPS faculty.
- Providing limited 1st Line Supervisor Training to MPOs/FTOs.
- Exploring the implementation of the A.D.O.R.E. (Automated, Daily Observation Reports & Evaluation) software program for the citywide monitoring of field training activity.

In addition to the changes listed above, MPD also finalized their revisions and enhancements to the FTO Protocol during the last quarter and it was submitted to DOJ on September 27, 2004. On December 9, 2004 DOJ provided their final approval of the FTO program. MPD looks forward to implementing the program as well as the enhancements described above.

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<sup>45</sup> MOA paragraph 121f

<sup>46</sup> MPD’s Master Patrol Officers serve as primary Field Training Officers for MPD.



One of the first steps that MPD has taken to better coordinate our efforts is to ensure that a lieutenant or above is assigned to serve as the FTO Program Coordinator for each district. The Deputy Director of IPS began holding monthly meetings with the coordinators during this quarter. The draft program was distributed to each District Commander and to each of the District Coordinators during this quarter. MPD feels that these meetings will provide coordination between the different district FTO programs and to ensure consistency among the programs. In our coming quarterly reports, we will provide updates on our implementation of the approved FTO program as well as our progress on implementing the enhancements described above.

**One of the first steps that MPD has taken to better coordinate our FTO efforts is to ensure that a lieutenant or above is assigned to serve as the FTO Program Coordinator for each district.**

### ***Other IPS Memorandum of Agreement Activities***

On December 30, 2004 MPD submitted its Semi-Annual Use of Force Curriculum Review prepared by the Curriculum Development Specialist (CDS) at IPS. These reviews are required by MOA Paragraph 119 to be submitted to both the Department of Justice and the Office of the Independent Monitor. The latest review summarized the various changes that IPS staff have made to the use of force curriculum during the past six months. There were no approved changes to any of the relevant use of force policies during this time, so the majority of changes made to the lesson plans were due to suggestions made by the Department of Justice. The review summarized those changes. In addition, the review summarized the efforts of MPD's Office of the General Counsel (OGC) to review the revised lesson plans. MOA paragraph 120 requires that,

*"MPD shall continue to have all training materials reviewed by General Counsel or other legal advisor."*

The OGC completed their initial review of the use of force curriculum in 2002. The OGC reviewed several of the revised versions of the lesson plans during this quarter and approved the Cultural Diversity and Sensitivity Awareness Lesson Plan, the Officer Street Survival Lesson Plan, and the Use of Force and Use of Force Continuum Lesson Plan. IPS and OGC staff have also designed a checklist to track OGC review and approval of the various lesson plans. Both IPS and OGC plan to continue to have OGC review lesson plans as they are created and revised.

Also during this quarter, MPD addressed compliance deficiencies with MOA paragraph 132b. MOA paragraph 132b requires, in part, that,

*“... Within 180 days of the effective date of this Agreement, MPD shall begin videotaping students in order to replay their decisions and actions during the critique portion of the courses...”*

The Office of the Independent Monitor reported in their July 2004 quarterly report that the new facility being used by MPD to conduct firearms training, the Federal Law Enforcement Training Center (FLETC) in Cheltenham, Maryland, did not have the capability to videotape the role play component of firearms training as required by the MOA. IPS has been working to remedy this situation since July 2004. In Early October, the Firearms Training staff obtained two hand-held video cameras, and they have been using those cameras to videotape the role-play portion of training since early October. MPD is very pleased to have resumed its compliance with MOA paragraph 132b.

The IPS staff has worked very hard during this quarter in revising lesson plans, preparing the Semi-Annual Use of Force Curriculum Review, and beginning the implementation of the approved FTO Program Protocol. IPS continues to work toward ensuring full compliance with the training requirements in the MOA.

## **Personnel Performance Management System**

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The Metropolitan Police Department and the District of Columbia have committed to develop and fully implement the Personnel Performance Management System, the early intervention system required by the MOA. PPMS will be,

*“a computerized relational database for maintaining, integrating, and retrieving data necessary for supervision and management of the Police Department and its personnel.”<sup>47</sup>*

PPMS will be used regularly and affirmatively by the Metropolitan Police Department to promote civil rights integrity and best professional police practices.

As previously reported, MPD has experienced significant delays with the implementation of PPMS. MPD acknowledged that it had not met the original PPMS timetables set forth in the MOA, and Chief Ramsey was not satisfied with the progress made on the project. He recognized that the Department's efforts in this area needed to be enhanced. Accordingly, Chief Ramsey reorganized the MPD Information Technology Division (MPD-IT), and appointed a new Chief Information Officer (CIO) who reports directly to him. In turn, the CIO appointed a Director for the PPMS project to ensure that the PPMS program is treated as a priority. Accordingly, MPD, DOJ and the City were able to reach

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<sup>47</sup> MOA Paragraph 106

agreement on September 30, 2003 to a second modification to the MOA that provided revised deadlines for all PPMS-related MOA deliverables.<sup>48</sup>

In accordance with MOA Paragraph 114b, MPD selected IBM and CRISNet Incorporated to develop PPMS. IBM/CRISNet began work with the Department in September 2003. MPD and IBM/CRISNet worked very closely during late 2003 and early 2004 to finalize the development of PPMS system requirements. However, as previously reported, MPD experienced a significant setback in the area of funding for PPMS. MPD had to temporarily interrupt work with IBM/CRISNet on March 31, 2004 due to a lack of funding. Accordingly, since March 2004, MPD has been directing its efforts toward securing the necessary funding for restarting work with IBM/CRISNet on the PPMS Program and securing a finalized contract.

MPD notified DOJ of the funding setback on March 8, 2004 and has kept both the Department of Justice and the Office of the Independent Monitor updated on our progress with securing the necessary additional funding. As previously reported, MPD submitted new deadlines to DOJ on June 18, 2004 for the PPMS program. In addition to the proposed development schedule, MPD also provided a listing of assumptions that guided the development of the revised project schedule. MPD's June 18 submission contained MPD's initial proposal for a third modification to the MOA with new deadlines for the development of PPMS.

During the past two quarters, MPD has been engaged in discussions with DOJ regarding these new deadlines. DOJ and MPD were able to agree to final language for the third modification as well as new deadlines for the development of PPMS in late December. However, the Mayor's office raised concerns and wanted the assurances of the other affected City agencies that they could meet the proposed deadlines prior to agreeing to sign the Modification. Specifically, the Mayor's office wanted the assurances of the agency heads from the Office of Contracting and Procurement, the Office of the Attorney General, and the Office of the Chief Technology Officer to the proposed deadline for securing the contract with the vendor before signing the document. Unfortunately, MPD was unable to secure those assurances prior to the end of the quarter. However, Chief Ramsey and MPD staff immediately began working with the various agencies to address the concerns of the Mayor's Office. Unfortunately, MPD was unable to get a commitment to the January 28 deadline to restart our work with the PPMS vendor.

However, all of the agencies agreed to treat the preparation of the PPMS contract for City Council as a top priority. Accordingly, MPD worked with the agency representatives to identify ways to compress their required reviews to the greatest extent possible and

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<sup>48</sup> See "Joint Modification No. 2 to June 13, 2001 Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Police Department, September 30, 2002"

to identify when we could expect to have City Council vote on the PPMS contract. We expect to submit the PPMS contract package to the City Council during the next quarter. MPD appreciates the tremendous amount of cooperation we have received from the other District agencies in addressing this issue. MPD regrets the continued delays we have experienced in implementing PPMS, and appreciates DOJ's patience as we address these issues.

While this work interruption has clearly impacted MPD's development of PPMS, both MPD and the City are working very hard to ensure that the impact of the interruption is minimized to the greatest extent possible.

In addition to working on the finalizing the third Modification to the MOA, MPD also continued to hold PPMS team meetings to ensure that preparations are completed for bringing the PPMS vendor on board. During this quarter, a number of smaller work groups were created to address these issues. The following work groups were created:

- Database Conversion Validation Team
- Development Team
- Technical Infrastructure Team
- Early Intervention Program Team
- Reports Team
- General Order and Process Team
- User Acceptance Test Development Team
- PPMS MOA Compliance Monitoring Team
- Training Team
- Rollout Team

During this quarter, the teams were formed, and team leads were chosen. The teams met and developed "charters" that outlined their mission and objectives. At the end of the quarter, the teams were working on completing schedules that would outline the work that needed to be completed before the vendor comes on board.

MPD is very concerned with the setbacks experienced in the development of PPMS. MPD plans to keep both the Department of Justice and the Office of the Independent Monitor apprised of our efforts in forwarding the PPMS contract to the City Council for approval. MPD remains committed to implementing PPMS and will continue to treat the implementation of the system as a priority for the Department.

### ***Performance Evaluation System***

The MOA requires that MPD enhance its Personnel Evaluation System. Paragraph 118 of the MOA reads, in part,

*“...MPD shall prepare for the review and approval of DOJ, and thereafter implement, a plan to enhance its new Performance Evaluation System to ensure that annual personnel performance evaluations are prepared for all MPD sworn employees that accurately reflect the quality of each sworn employee's performance, including, but not limited to:*

- a. civil rights integrity and the employee's community policing efforts;*
- b. adherence to law, including but not limited to performing duties in a manner consistent with the requirements of the Fourth and Fifth Amendments to the Constitution and the Civil Rights laws of the United States;*
- c. with respect to managers, and supervisors, their performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force; arrests, booking, and performance bearing upon honesty and integrity.”*

The Metropolitan Police Department submitted a draft *Enhanced Performance Evaluation System Protocol* to DOJ on November 8, 2002. DOJ provided comments on the protocol on May 2, 2003. MPD provided a status report on those comments on September 30, 2003. On October 6, 2003 DOJ provided comments on MPD's update. On March 5, 2004, MPD provided an additional update regarding its efforts in revising the Performance Evaluation System that outlined the work done by MPD to date. The update also identified the primary remaining tasks as being the staffing of the *Performance Management System (PMS) for Sworn Members Serving in the Ranks/Positions of Officer, Agent, and Sergeant General Order*, and the completion of the revised manuals for officer and sergeant performance evaluation standards.

MPD submitted the final, revised materials to DOJ for review on July 1, 2004. The following materials were included with the submission:

- Revised Performance Management System, Officer Performance Standards
- Revised Performance Management System, Sergeant Performance Standards
- Revised Performance Management System, Investigative Personnel<sup>49</sup> Performance Standards
- General Order PER 201.20, Performance Management System (PMS) for Sworn Members Serving in the Ranks/Positions of Officer, Agent, and Sergeant

On September 10, 2004, MPD contacted the Department of Justice to request that they expedite their review of our most recent submission. MPD performance evaluations for officers and sergeants operate under the “fiscal year” timeframe (October 1 – September 30). Accordingly, MPD wanted to implement the new standards and revised general order in time for the new rating period. DOJ agreed to do what they could to

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<sup>49</sup> Investigative personnel include agents, investigators, detectives grade two and detectives grade one

accommodate our request. On September 24, 2004 DOJ contacted MPD to request additional information to aid in their review. In part, they wanted to obtain some overview information regarding the City's "Performance Management Program" (PMP).

The PMP is the citywide program designed to be an objective and developmental approach to assessing employee performance. The PMP provides a framework for supervisors and employees to communicate with each other regarding work expectations, job performance, and career development and to recognize employee accomplishments and improve employee performance through training. MPD uses the Performance Management Program for evaluating sworn members the rank of lieutenant or above. MPD provided the requested information regarding the PMP on September 29, 2004.

On November 29, 2004, MPD contacted DOJ to inform them that we felt we had to move forward with issuing a special order governing FY 2005 performance evaluations along with the instructional manuals and governing standards. MPD regretted having to move forward with this rating period without having received DOJ's comments or approval. However, MPD felt we could not delay the start of the rating period, along with the initial supervisor conferences, any further.

It is important to note that MPD has already revised the PES materials that were issued based on comments DOJ had already provided. Accordingly, we feel that the materials issued for FY 2005 are significant improvements over previous materials, and MPD feels that we are well on our way to being fully compliant with the requirements of MOA paragraph 118.

On December 15, 2004, DOJ provided their comments on the July 1, 2004 submission. MPD is currently reviewing those comments and will work with DOJ to obtain final approval and implement any additional revisions that are necessary for the FY 2006 rating period.

## **Department of Justice**

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Since the creation of the Compliance Monitoring Team in February 2002, there has been significant, sustained interaction and cooperation between the Metropolitan Police Department and the Department of Justice. Notwithstanding meetings and formal correspondence, there have been numerous other contacts between the two agencies in order to continue the established dialogue.

During this reporting period, representatives from MPD and DOJ met at the monthly "all-hands" meeting held at the Office of the Independent Monitor, as well as monthly DOJ and CMT Meetings that are held on the third Thursday of every month. DOJ also

provided comments on MPD work products during the quarter consistent with MOA paragraph 178.<sup>50</sup> DOJ provided comments on a number of MPD deliverables during this reporting period including:

- *Canine Teams General Order* (MOA paragraphs 44-46)
- Memorandum of Understanding Between MPD and OCCR (MOA paragraph 85)
- *Disciplinary Process General Order* (MOA paragraph 105)
- Enhanced Performance Evaluation System (MOA paragraph 118)
- Field Training Officer Program (MOA paragraph 121f)
- *Limitation on Work Hours General Order* (MOA paragraph 159)

DOJ representatives also provided a great deal of time and resources to discussions involving the proposed deadlines for the development of PPMS and the third modification to the MOA. We appreciate DOJ's continued assistance with these items.

The level of cooperation between the MPD and DOJ remains high. MPD is extremely pleased with the relationship that exists with the U.S. Department of Justice. DOJ's MPD team is continually professional, responsive, and helpful. The Metropolitan Police Department looks forward to continuing its partnership with the Department of Justice to jointly complete the requirements of this Memorandum of Agreement.

## **Fraternal Order of Police**

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The Fraternal Order of Police is the Labor Union for all police officers, technicians, detectives, and sergeants on the Metropolitan Police Department. The Metropolitan Police Department recognizes the importance and value of including the FOP in Memorandum of Agreement endeavors.

However, the relationship between MPD and the FOP, at times, has been challenging. The FOP had initially declined to participate in MOA-related endeavors, and has previously filed an Unfair Labor Practice (ULP) Complaint against the Metropolitan Police Department with the District of Columbia Public Employees Relations Board (PERB). The Labor Union cited alleged changes in terms and conditions of employment relating to the Memorandum of Agreement as the reason for the filing.

As previously reported, the Hearing Examiner for the case stated that the filing of the Unfair Labor Practice charge fell outside of the 120-day window established by PERB

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<sup>50</sup> MOA paragraph 178 reads, "*DOJ shall review documents and information provided by MPD and the Monitor and shall provide its analysis and comments to the City, MPD and the Monitor at appropriate times and in an appropriate manner, consistent with the purpose of this Agreement to promote cooperative efforts.*"

Rule 520.4 for filing such charges. The Hearing Examiner did not address the merits of the case. Exceptions were filed by the union and opposed by the Department. The PERB issued a decision during this quarter. On October 15, 2004, the PERB adopted the finding of the Hearing Examiner that the case should be dismissed because the FOP did not file its complaint in a timely manner. As a result, the PERB dismissed the complaint in its entirety.

During this quarter, the FOP and MPD continued their negotiations regarding compensation and working conditions. Article 12 of the Collective Bargaining Agreement, which specifically relates to disciplinary procedures, is currently one of the items being negotiated. The MPD and FOP reached an impasse this quarter during their negotiations and entered into a mediation process. Accordingly, MPD notified DOJ that the *Disciplinary Process General Order* required by MOA paragraph 105 cannot be finalized by MPD until those negotiations are complete. We plan to keep both the OIM and DOJ updated on our progress with this issue.

However, MPD will continue to work with FOP on issues related to the MOA. MPD believes that the inclusion of the FOP in discussion of deliverables related to the MOA as well as keeping them informed on MPD's progress has been useful to both parties.

## **Independent Monitor**

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The Memorandum of Agreement requires that the Metropolitan Police Department and the Department of Justice jointly select an Independent Monitor to review, report, and assist on matters related to the Agreement's implementation.<sup>51</sup> On March 28, 2002, the Metropolitan Police Department and the law firm of Fried, Frank, Harris, Shriver & Jacobson jointly announced that Michael R. Bromwich had been selected as the Independent Monitor. Mr. Bromwich is a partner at the firm, and is head of the internal investigations, compliance and monitoring practice group there.

The Independent Monitor completes and disseminates quarterly progress reports regarding MPD's Memorandum of Agreement compliance efforts. The next report is scheduled to be completed later this month. Previous reports are available at the Independent Monitor's website at [www.policemonitor.org](http://www.policemonitor.org).

The Independent Monitor continues to host monthly "all-hands" meetings in which all MOA stakeholders meet including the Chief of Police, the Department of Justice, the Office of Citizen Complaint Review, and the Compliance Monitoring Team. These meetings occur on the first Monday of each month.

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<sup>51</sup> MOA Paragraph 161



Additionally, the OIM has continued its practice of sending its police practice experts to the Department in order to review various aspects of MOA compliance. The Compliance Monitoring Team has been assisting the OIM by facilitating document and meeting requests throughout the Department. During this reporting period, members of the OIM team engaged in the following monitoring activities:

- Completed review of sixth sample of use of force and misconduct investigations
- Continued reviewing all completed FIT preliminary and final use of force investigations
- Monitored UFRB hearing and provided technical assistance regarding the UFRB
- Reviewed training records and interviewed IPS personnel
- Monitored community outreach efforts
- Continued review of OCCR investigator training program
- Reviewed OCCR investigations
- Monitored in-service firearms training
- Interviewed Canine Unit commander

The OIM has begun to implement their substantial compliance definitions for the MOA. In the most recent quarterly report, the OIM reported on MPD's compliance with these standards. MPD has been very pleased with the OIM's analysis and found their reporting on the substantial compliance standards to be balanced and fair. MPD looks forward to working with the OIM for the remainder of the MOA.

## **Conclusion**

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The Metropolitan Police Department is pleased with our progress during this quarter. The Department received DOJ approval for a number of important MOA requirements including the Field Training Officer Program Protocol, the MPD and OCCR Memorandum of Understanding, and the *Limitation of Work Hours General Order*. Obtaining DOJ approval for these documents are important milestones in complying with the MOA.

In addition, MPD also submitted a number of additional items to DOJ for their review and approval including:

- *Canine Teams General Order*

- Revised UFIR, RIF, and SMUAAR
- *Processing Citizen Complaints General Order*
- Semi-Annual Use of Force Curriculum Review
- IPS Staff Assessment Update
- Cultural Diversity and Sensitivity Awareness Lesson Plan
- Use of Force and Use of Force Curriculum Lesson Plan with Manual
- Interview and Interrogation Lesson Plan
- Pistol Qualification Lesson Plan

However, MPD remains very concerned with the delays experienced in finalizing the third modification to the MOA related to missed PPMS deadlines. MPD is devoting significant time and attention to ensure that the PPMS contract is finalized and submitted for City Council approval as early as possible during the next quarter. MPD will continue to treat PPMS as a priority for the Department. While we regret that we were unable to complete a modification by the end of the quarter, we are confident that we will be able to reach agreement with DOJ during the next quarter.

The Metropolitan Police Department remains committed to becoming fully compliant with the provisions of the MOA and becoming the national model on how to uphold the rule of law while using force only when and to the extent necessary.

## **A t t a c h m e n t s**

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- MPD-DOJ Memorandum of Agreement Completion Matrix Report, December 31, 2004.
- Memorandum Of Understanding Between the Office of Citizen Complaint Review and the Metropolitan Police Department, December 22, 2004.
- Submission to Department of Justice re: MOA paragraph 94, Processing Citizen Complaint General Order, December 30, 2004